



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,855	02/20/2004	Werner Doetsch	038715.53046US	1653

23911 7590 09/01/2006

CROWELL & MORING LLP
INTELLECTUAL PROPERTY GROUP
P.O. BOX 14300
WASHINGTON, DC 20044-4300

EXAMINER

SAYALA, CHHAYA D

ART UNIT	PAPER NUMBER
----------	--------------

1761

DATE MAILED: 09/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/781,855

Applicant(s)

DOETSCH ET AL

Examiner

C. SAYALA

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/14/2006 has been entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 4-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Doetsch et al. (US Patent 6193776) in view of GB 1580248 and further in view of GB 1575792.

Doetsch et al. teach a homogeneous calcium/magnesium peroxide with an active oxygen content of 10-18% by wt. The patent does not teach the boron.

The GB '248 teaches a calcium peroxide amount of up to 50% and 0 to 5% of boric acid in a solution which are fed into a granulator and then dried. A granulator inherently would mix the ingredients to homogeneity. The patent teaches treating sugar beet seeds with calcium peroxide, 0.01 and 90.0% by weight, for improving the quality of the beet. The boron additive is added in an amount 0 to 10%, preferably 0 to 5% by wt. (see page 2, lines 10-25; page 1, lines 25-30).

It would have been obvious to treat the peroxygenated of the primary reference also by treating them with boric acid, which '792 states, adds stability to the peroxygenated compounds. See col. 1, lines 26-45 and col. 2, lines 45-52 at page 1. Line 53 at page 1 states "In order to improve the stability of the peroxygenated compounds it has also been suggested that the peroxygenated compounds be mixed in the solid phase with metaboric acid". Such a teaching provides motivation to combine the compounds as shown by '248 and to incorporate such in the primary patents.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the peroxygenated compounds of the primary references with boric acid which adds stability to the peroxygenated compounds, as taught by '792 to form dry homogeneous granules by the method of GB '248. See page 2, lines 18-30. To incorporate the method of '248 in '776 in order to introduce boron compounds to that composition to add to the stability of the the peroxygenated composition, would have been obvious to one of ordinary skill in the art at the time was made. Note '792 at page 3, line 108 and page 4, line 56, which include the concept of homogenization in its incorporation of peroxide and boron compounds, thus both the

primary and secondary references teach the same concept of homogenizing their compounds.

Response to Arguments

Applicant's arguments filed 8/14/06 have been fully considered but they are not persuasive.

Applicant's traversal of the 35 USC 103 rejection has been carefully reviewed. Since, based on the amendments to the claims, the 35 USC 102 rejections have been withdrawn, only the traversal of this 103 rejection will be discussed herein.

At page 6 of his remarks, applicant states that Doetsch discloses a "homogeneous Ca/Mg peroxide, but is silent as to boron, or that boron is homogeneously distributed within the peroxides. Applicant holds that the deficiency is not remedied by the secondary references.

This position has been carefully reviewed, but based on the references themselves, and the following reasons, this is vigorously disagreed with:

1. Doetsch et al. already teach a homogeneous Ca/Mg peroxide, its manufacture and use.
2. The method of making this is shown at col. 3 and example 1.
3. Both the references and the specification appear to do the same thing; mixing a boron compound with the peroxide.

4. The motivation to combine the boron compound with the peroxide in homogeneity, comes from the '792 reference, which expressly provides the reason for adding boron, i.e. boron compounds add stability to peroxygenated compounds.

5. Fact: '792 separately and expressly teaches homogenization of the peroxygenated compound with the boron compound. See page 3, lines 105-110 and page 4, lines 56+. Furthermore, Doetsch et al. also teach a homogenized Ca/Mg peroxide composition.

Thus, based on these facts, the 35 USC 103 rejection is proper and is being maintained.

Applicant's discussion that all the elements are not to be found in a single reference (see page 6, second paragraph) is unconvincing, based on the above and based on the fact that there is no such requirement for a 35 USC 103 rejection that all the elements of a claim be found in a single reference. Also, applicant's reiterating that the composition is "boron-doped" has been considered and since the discussion of boron being a dopant has been responded to in the Final Office action filed 2/14/06, that same discussion applies here too.

As for the following at page 7: "GB 1575792 teaches peroxygenated compounds that are coated with a solid coating agent containing at least one boric compound (see page 1). However, there is no teaching or suggestion in GB 1580248 that such a coating process results in a homogeneous doping of boron within the mixedcalcium/magnesium peroxide."

Art Unit: 1761

The '792 patent is important for its teaching that boron adds stability to peroxygenated compounds and that the composition shown therein i.e. the peroxygenated compound and boron compound is homogeneous. This provides an important teaching about homogeneity and the suggestion to do what applicant has done, which is to mix boron compounds with the Doetsch et al. composition.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. SAYALA whose telephone number is 571-272-1405.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



C. SAYALA
Primary Examiner
Group 1700.